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7 IN THE UNITED STATES DISTRICT COURT

8 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) CR. NO. S-04-408-DFL
11 Plaintiff,) APPLICATION FOR ORDER
12 v.) REGARDING CRIMINAL FORFEITURE
13 DAVID NUNEZ MALDONADO,) OF PROPERTY IN GOVERNMENT
14 GUADALUPE MARIA LUNA,) CUSTODY - 18 U.S.C. §
15 JOSE DE JESUS BUENROSTRO, and) 983(a) (3) (B) (ii) (II)
16 FERNANDO TREJO DAMIAN,)
17 Defendants.)
18)
19)

18 The United States of America, through its counsel, hereby
19 moves for an order allowing the government to maintain custody of
20 property already in the government's possession pending the
21 resolution of a criminal forfeiture matter. The grounds for the
22 motion are as follows:

23 On or about October 26, 2004, during the execution of federal
24 search warrants, inspectors of the United States Postal Inspection
25 Service ("USPIS") seized the following assets for the purpose of
26 initiating civil forfeiture proceedings:

27 a). Approximately \$7,139.00 in U.S. Currency seized on
or about October 26, 2004;

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1 b). Approximately \$2,405.00 in U.S. Currency seized on or
2 about October 26, 2004;

3 On or about October 27, 2004, Magistrate Judge Nowinski issued
4 civil seizure warrants pursuant to 18 U.S.C. § 981(b) based on
5 probable cause for the following funds in the various bank
6 accounts. On that same day, USPIS inspectors seized the following
7 assets for the purpose of initiating civil forfeiture proceedings:

8 c). Approximately \$8,986.20 in U.S. Currency seized on or
9 about October 27, 2004, from Umpqua Bank, account number
10 990050544, held in the name of David Nunez;

11 d). Approximately \$16,889.93 in U.S. Currency seized on or
12 about October 27, 2004, from Wells Fargo Bank, account
13 number 0039971692, held in the name of David Nunez;

14 e). Approximately \$4,991.25 in U.S. Currency seized on or
15 about October 27, 2004, from Redwood Credit Union,
16 account number 11000000212028, held in the name of David
17 Nunez;

18 f). Approximately \$8,616.50 in U.S. Currency seized on or
19 about October 27, 2004, from Savings Bank of Mendocino
20 County, account number 02080911, held in the name of
21 David Nunez; and

22 g). Approximately \$14,476.30 in U.S. Currency seized on or
23 about October 27, 2004, from Bank of America, account
24 number 01282-06808, held in the name of David Nunez.

25 Hereinafter, the above-referenced assets (a-g) are
26 collectively referred to as the "seized assets".

27 In accordance with 18 U.S.C. § 983(a)(1), the USPIS sent
28 notice to defendant David Nunez Maldonado of its intent to forfeit
the seized assets in a non-judicial forfeiture proceeding, and
caused that notice to be published in a newspaper of general
circulation.

29 On or about January 26, 2005, defendant David Nunez Maldonado
30 filed a claim contesting the administrative forfeiture of the
31 seized assets pursuant to 18 U.S.C. § 983(a)(2).

1 Pursuant to 18 U.S.C. § 983(a)(3), the United States has 90
2 days in which to 1) return the property to the defendant, 2)
3 commence a civil judicial forfeiture action, or 3) commence a
4 criminal forfeiture action by including the seized assets in a
5 criminal indictment. On April 21, 2005, the Government elected the
6 third option when it filed a Superseding Indictment containing a
7 forfeiture allegation concerning the seized assets. That
8 Superseding Indictment is now pending in this Court.

9 Title 18 U.S.C. § 983(a)(3)(B)(ii)(II) provides that when the
10 government elects the third option, it must "take the steps
11 necessary to preserve its right to maintain custody of the property
12 as provided in the applicable criminal forfeiture statute". The
13 applicable forfeiture statute in this case is 18 U.S.C. § 982.
14 Title 18 U.S.C. § 982(b)(1) incorporates the forfeiture procedures
15 set forth in 21 U.S.C. § 853. That statute prescribes several
16 methods for preserving property for the purpose of criminal
17 forfeiture.

18 Section 853(f) authorizes the issuance of a criminal seizure
19 warrant. However, in cases like this one, where the property in
20 question is already in Government custody, it is not appropriate
21 for a court to issue a seizure warrant directing the Government to
22 seize property from itself. In turn, Section 853(e) authorizes the
23 court to issue a restraining order or an injunction to preserve the
24 property for forfeiture. However, that provision is not pertinent
25 because there is no need to enjoin the government from disposing of
26 property that the government has taken into its custody for the
27 purpose of forfeiture, and that the Government intends to preserve
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1 for that purpose through the conclusion of the pending criminal
2 case.

3 Finally, Section 853(e)(1) also authorizes a court to "take
4 any other action to preserve the availability of property" subject
5 to forfeiture. The government contends that this provision applies
6 in circumstances where, as here, the government has already
7 obtained lawful custody of the seized assets pursuant to federal
8 seizure and search warrants, and the government seeks to comply
9 with Section 983(a)(3)(B)(ii)(II). Thus, all that is required to
10 comply with Section 983(a)(3)(B)(ii)(II) is an order from this
11 Court stating that the United States and its agencies, including
12 USPIS and/or the United States Marshals Service, may continue to
13 maintain custody of the seized assets until the criminal case is
14 concluded.

15 Accordingly, pursuant to Section 853(e)(1), the United States
16 respectfully moves this court to issue an order directing that the
17 United States may maintain custody of the seized assets through the
18 conclusion of the pending criminal case, and stating that such
19 order satisfies the requirements of 18 U.S.C.

20 § 983(a)(3)(B)(ii)(II).

21 DATED: May 26, 2005

McGREGOR W. SCOTT
United States Attorney

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24 By: /s/
25 MATTHEW C. STEGMAN
26 Assistant U.S. Attorney
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1 **ORDER**

2 This matter comes before the Court on the motion of the United
3 States for an Order authorizing the government and its agencies to
4 maintain custody of certain property pending the conclusion of the
5 pending criminal case. For the reasons provided in the
6 government's motion, the Court makes the following orders:

7 IT IS HEREBY ORDERED, that the United States and its agencies,
8 including the USPIS and/or the U.S. Marshals Service, are
9 authorized to maintain and preserve the following assets until the
10 conclusion of the instant criminal case, or pending further Order
11 of this Court:

12 a). Approximately \$7,139.00 in U.S. Currency seized on or
13 about October 26, 2004;

14 b). Approximately \$2,405.00 in U.S. Currency seized on or
15 about October 26, 2004;

16 c). Approximately \$8,986.20 in U.S. Currency seized on or
17 about October 27, 2004, from Umpqua Bank, account number
18 990050544, held in the name of David Nunez;

19 d). Approximately \$16,889.93 in U.S. Currency seized on or
20 about October 27, 2004, from Wells Fargo Bank, account
21 number 0039971692, held in the name of David Nunez;

22 e). Approximately \$4,991.25 in U.S. Currency seized on or
23 about October 27, 2004, from Redwood Credit Union,
24 account number 11000000212028, held in the name of David
25 Nunez;

26 f). Approximately \$8,616.50 in U.S. Currency seized on or
27 about October 27, 2004, from Savings Bank of Mendocino
28 County, account number 02080911, held in the name of
David Nunez; and

29 g). Approximately \$14,476.30 in U.S. Currency seized on or
30 about October 27, 2004, from Bank of America, account
31 number 01282-06808, held in the name of David Nunez.

32 IT IS SO ORDERED.

33 DATED: 6/9/2005

34 /s/ David F. Levi
35 DAVID F. LEVI
36 UNITED STATES DISTRICT JUDGE